

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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KEVIN CHRISTOPHER MICHEAL  
TRIPP,

Plaintiff,

vs.

ARTHUR ALLCOCK, ASSOCIATE  
WARDEN, SOUTH DAKOTA STATE  
PENITENTIARY, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITY; JENNIFER  
DRESKE, DEPUTY WARDEN, SOUTH  
DAKOTA STATE PENITENTIARY, IN  
HER INDIVIDUAL AND OFFICIAL  
CAPACITY; EUGENE REGIER,  
DOCTOR, SOUTH DAKOTA STATE  
PENITENTIARY, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITY; ROBERT  
VESTLIE, SENIOR CORRECTIONAL  
OFFICER, SOUTH DAKOTA STATE  
PENITENTIARY, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITY; AND TAMMY  
TOP, CERTIFIED NURSE  
PRACTITIONER, SOUTH DAKOTA  
STATE PENITENTIARY, IN HER  
INDIVIDUAL AND OFFICIAL CAPACITY;

Defendants.

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4:17-CV-04076-KES

ORDER GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS

Plaintiff, Kevin Christopher Michael Tripp, is an inmate at the South Dakota State Penitentiary in Sioux Falls. On May 23, 2018, the court granted defendants' motion for summary judgment and dismissed Tripp's complaint on the report and recommendation of Magistrate Judge Duffy. Docket 36. Tripp

now appeals the judgment (Docket 38) and moves for leave to proceed in forma pauperis on appeal (Docket 39).

Under the Prison Litigation Reform Act (PLRA), a prisoner who “files an appeal in forma pauperis . . . [is] required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). This obligation arises “ ‘the moment the prisoner . . . files an appeal.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). Therefore, “ ‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Id.* (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

In *Henderson*, the Eighth Circuit set forth “the procedure to be used to assess, calculate, and collect” appellate filing fees in compliance with the PLRA. 129 F.3d at 483. First, the court must determine whether the appeal is taken in good faith. *Id.* at 485 (citing 28 U.S.C. § 1915(a)(3)). Then, so long as the prisoner has provided the court with a certified copy of his prisoner trust account, the court must “calculate the initial appellate partial filing fee as provided by § 1915(b)(1), or determine that the provisions of § 1915(b)(4) apply.” *Id.* The initial partial filing fee must be 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or

- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1). Nonetheless, no prisoner will be "prohibited from . . . appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(4).

It appears that Tripp's appeal is taken in good faith. Further, he has provided the court with a report of his prisoner trust account, which indicates that he has average monthly deposits to his prisoner trust account of \$11.84 and an average monthly balance of *negative* \$1682.00. Docket 4. Based on this information, the court finds that § 1915(b)(1) applies. Tripp may proceed in forma pauperis on appeal provided he pays an initial partial appellate filing fee of \$2.36, which is 20 percent of \$11.84. Thus, it is ORDERED

1. Tripp's motion to proceed in forma pauperis on appeal (Docket 39) is granted. Tripp must make an initial partial appellate payment of \$2.36 by August 16, 2018, made payable to the Clerk, U.S. District Court.
2. The institution having custody of the Tripp is directed that whenever the amount in Tripp's trust account, exclusive of funds available to him in his frozen account, exceeds \$10, monthly payments that equal 20 percent of the funds credited to the account the preceding month shall be forwarded to the United

States District Court Clerk's office pursuant to 28 U.S.C.

§ 1915(b)(2), until the appellate filing fee of \$505 is paid in full.

DATED this 17th day of July, 2018.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE